

U.S. Patent Application Serial No. 09/814,099  
Amendment filed September 1, 2005  
Reply to OA dated June 20, 2005

**REMARKS**

Claims 1 and 11 have been amended in order to more particularly point out, and distinctly claim the subject matter to which the applicant regards as his invention. The applicant respectfully submits that no new matter has been added. It is believed that this Amendment is fully responsive to the Office Action dated June 20, 2005.

Claims 1 - 13 are currently pending in this patent application, claims 4 - 10 having been withdrawn as a result of a response to a Restriction Requirement filed on April 10, 2002.

Claim 1 stands rejected under 35 USC §112, second paragraph, for the specific reasons set forth in item 2, page 2 of the outstanding Action. More particularly, the Examiner has taken the position that the claimed operating amount change judging portion does not appear to be related to the other recited claimed elements. The applicant respectfully requests reconsideration of this rejection.

Accordingly, independent claim 1 has been amended so as to more particularly recite that it is the claimed controller that further has the claimed operating amount change judging portion. Moreover, independent claim 1 has been amended so that the claimed automatic excavation control means starts an automatic excavation control when the boom lever is operated “as judged by the

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operating amount change judging portion and when said load judging portion judges that the vehicle is under excavation."

In this manner, the claimed operating amount change judging portion is structurally related to the claimed controller, and such claimed operating amount change judging portion is further functionally related to the fact that the judging thereof is related to the boom lever operation which in turn starts the automatic excavation control.

In view of the above, the withdrawal of the outstanding indefiniteness rejection under 35 USC §112, second paragraph, is in order, and is therefore respectfully solicited.

As to the merits of this case, the following obviousness rejections are set forth in the outstanding Action:

- 1) claim 1 stands rejected under 35 CFR §103(a) based on Hanamoto (U.S. Patent No. 5,356,259); and
- 2) claim 11 stands rejected under 35 CFR §103(a) based on Hanamoto in view of Igarashi (U.S. Patent No. 4,332,517).

The applicant respectfully requests reconsideration of these rejections.

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It is clear that in the Examiner's characterization of the primary reference of Hanamoto (a Komatsu patent), the Examiner has taken the position that:

Hanamoto does not explicitly teach an excavating state detecting means, and does not explicitly disclose an operating amount change judging portion for judging on the basis that the boom lever operating amount changes from a predetermined operating amount to a zero amount.<sup>1/</sup>

Emphasis added. Based on the above-noted Examiner's comments on the claimed operating amount change judging portion, it appears that the Examiner may not have given the above-highlighted claimed structural arrangement any patentable weight in view of his comments under 35 USC §112.

As such, the applicant respectfully traverses the Examiners's reliance on the Hanamoto patent in view of the fact that it is clearly acknowledged by the Examiner that such Hanamoto reference does not teach the claimed operating amount change judging portion. Thus, the applicant's claimed automatic excavation control means, which starts the automatic excavation control when the boom lever is operated "as judged by the operating amount change judging portion", is lacking in the teachings of the Hanamoto patent.

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<sup>1/</sup> See, lines 13-16, page 3 of the outstanding Action.

As to Igarashi (similarly owned by Komatsu Limited, the assignee in this case), the Examiner specifically relies on lines 20-26, column 7 of Igarashi for, according to the Examiner, teaching that the Igarashi automatic excavation command value is based on “the judgment that the operating amount (EB) changes from a value to zero.”<sup>2/</sup> However, the discussions in Igarashi (as set forth in lines 20 - 26, column 7 therein) is directed to the controlling of the boom lever 14 such that when the control value is a constant, horizontal excavation takes place. Also, such is not the case with the applicants’ claimed automatic excavation control means which starts the automatic excavation control when the boom lever is operated as judged by the claimed operating amount change judging portion.

Accordingly, the applicants’ claimed invention, as now set forth in each of independent claims 1 and 11, would not have been obvious to a person of ordinary skill in the art under 35 USC §103(a) based on Hanamoto, singly or in combination with Igarashi.

Thus, the withdrawal of the outstanding obviousness rejection under 35 USC §103(a) based on Hanamoto, singly or in combination with Igarashi is in order, and is therefore respectfully solicited.

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<sup>2/</sup> See, lines 3-6, item 5, page 4 of the outstanding Action.

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In view of the aforementioned amendments and accompanying remarks, claims, as amended, are in condition for allowance, which action, at an early date, is requested.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the applicant's undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed, the applicant respectfully petitions for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper to Deposit Account No. 01-2340.

Respectfully submitted,

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